



April 1, 2022

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549-0609

Re: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E  
File No. SR-NYSEArca-2021-90, Release No. 34-04151

Dear Ms. Countryman,

Cumberland, a subsidiary of DRW Trading Group, appreciates the opportunity to respond to the request for comments related to the NYSE Arca (the “Exchange”) filing referenced above. Chairman Gensler and the Commission have made it clear that investor protection is a top priority—a position we overwhelmingly support. It is from this supportive position that we struggle to understand the Commission’s position on the Grayscale Bitcoin Trust (“GBTC”) at issue in the Exchange’s application, as well as other previously disapproved spot-based Bitcoin ETF applications.

GBTC represents the largest Bitcoin-based ETP in the world with a recent AUM of roughly \$28,200,000,000.<sup>1</sup> By design, GBTC strives to track the value of spot BTC versus the US dollar (“USD”). Nonetheless, its shares have consistently traded at a significant premium or discount to the value of its underlying spot Bitcoin holdings. **Recently, this discount has reached nearly 30%, equating to over 7 billion dollars in lost value for investors, many of which are likely retail.** This is due to GBTC’s lack of creation and redemption facility. Traditionally, an ETF’s price is kept in close alignment with the value of its underlying holdings by market participants that execute arbitrage strategies whereby they buy ETF shares at a discount and redeem them for their underlying assets or sell ETF shares at a premium and purchase its underlying assets to facilitate an ETF creation. In doing so, the ETF’s supply and demand equilibrium is maintained. We strongly believe that GBTC’s discount would very quickly compress to parity with its underlying holdings once creations and redemptions are permitted as an ETF, returning significant value to investors. Blocking the listing of the ETF in the name of investor protection has the opposite effect.

Retail investors are further disadvantaged due to a lack of competition among BTC-based ETFs, with only those based on CME futures from which to choose. BTC futures generally trade at a premium to spot BTC. This is because investors often prefer to enter into levered long positions in BTC, which they most easily do via CME futures. Arbitrageurs must be compensated for the capital cost and risk of buying spot BTC and shorting futures, which is why futures generally trade at a premium. Since January 1, 2020, the blended, average premium for the two most liquid CME BTC futures contracts to spot BTC has averaged 8.4%. This premium has at times exceeded 25% – often coinciding with the largest amounts of retail inflows to the ETFs. This means that retail investors who would have purchased a CME futures-based ETF underperformed spot BTC by over 840 basis points running, in addition to the management fees. The retail investors are being significantly harmed by being forced into an inferior product.

The Commission has not provided demonstrable and clear guidance on the thresholds that must be met to obtain its approval for a spot-based Bitcoin ETF—GBTC or otherwise. Nor has it cited specific statutory language or rulemaking that justifies what appears to be a double standard for those seeking approval for ETFs, with the line being drawn between futures- and spot-based ETFs. To date, the Commission has expressed general concerns about the risk of manipulation in the spot crypto-asset

---

<sup>1</sup> <https://grayscale.com/products/grayscale-bitcoin-trust/>.



market, but as we explain below, we do not believe there is a materially different risk of manipulation between spot- and futures-based Bitcoin ETFs, the latter of which have already been allowed by the SEC.

Our belief that spot Bitcoin ETFs are not materially more vulnerable to manipulation than futures-based ETFs is due to the presence of numerous arbitrageurs in the crypto-asset market. These market participants actively identify and capture arbitrage opportunities across multiple contract types including spot, futures, and ETPs. This arbitrage process limits price dislocations across various pools of liquidity, though it is important to note that persistent price dislocations may exist due to operational and economic differences across platforms. Due to the strictly defined relationship between products such as futures or ETPs and their underlying asset, we believe that to have a material impact a nefarious party would need to attempt to manipulate several pools of liquidity concurrently including CME futures contracts. Any narrowly scoped attempt to manipulate the spot Bitcoin market would be quickly counteracted by the collective activity of arbitrageurs and liquidity providers, ultimately facilitating orderly price discovery potentially causing artificial prices to be perpetuated across all Bitcoin related products, but in any case, forcing the arbitrage relationships to remain intact.

The Exchange's application is right to point out the structural similarities between the CME Bitcoin future and GBTC. The underlying index for CME Bitcoin Futures is the Crypto Facilities CME Bitcoin Reference Rate ("CME BRR"). CME BRR is composed of spot BTC/USD prices from four constituent exchanges: Coinbase, Kraken, Bitstamp, and Gemini.<sup>2</sup> These are among the same liquidity pools that would underlie the price discovery process of a spot-based ETF. While the SEC has allowed multiple futures-based ETFs to be offered to retail investors, it has allowed zero spot-based ETFs and provided limited justification beyond concerns regarding possible manipulation of the underlying commodity markets, which, as we've described above, would include the same markets that dictate pricing for the futures-based ETFs.

As we have seen with similarly structured commodity ETFs that hold the underlying spot asset (e.g. GLD), the Commission has determined that a spot commodity market with globally fragmented liquidity pools, price discovery, and regulatory frameworks may be the underlying asset of an ETF. Incidentally, a futures-based gold ETF would significantly underperform a spot gold ETF – for similar reasons to the underperformance of a futures-based Bitcoin ETF. Given this precedent and the precedent set by the SEC's approval of a futures-based Bitcoin ETF, we believe this proposal is consistent with the applicable requirements of Section 6(b)(5) of the Securities Exchange Act of 1934.

In fact, the SEC's disapproval of GBTC's request to convert to an ETF (and its general disapproval of spot-based Bitcoin ETFs) would continue to harm retail investors and would therefore be antithetical to its primary mandate of investor protection.

Cumberland thanks the Commission for the opportunity to comment on these important issues and strongly encourages the approval of the filing. Please feel free to contact the undersigned with any questions you may have on our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Graham Harper".

W. Graham Harper  
Head of Public Policy and Market Structure

---

<sup>2</sup> <https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges.pdf>.